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FILED
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42B-0016-I-2023
Lockman, Melissa
8.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER DIVISION
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK (BASIN 42B)
INTERLOCUTORY DECREE

* * * * *

CLAIMANT: Florence A. Young

OBJECTORS: Northern Cheyenne Tribe; United States of
America (Bureau of Indian Affairs)

CASE 42B-0016-I-2023

42B 30144792

42B 30144795

42B 30144796

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned appeared in the Interlocutory Decree for the Tongue River, above and including Hanging Woman Creek (Basin 42B) issued on January 12, 2022. The claims are owned by Florence A. Young. The claims received objections from the Northern Cheyenne Tribe (the Tribe) and the United States Department of Interior, Bureau of Indian Affairs (BIA).

FINDINGS OF FACT

42B 30144792 and 42B 30144795

1. Claim 42B 30144792 appeared in the Basin 42B Interlocutory Decree as a domestic claim for a well in the NENESE of Section 2, T8S, R39E, Big Horn County.

2. The claim was decreed with a flow rate of 10.00 gallons per minute and a volume of 3.50 acre-feet.

3. Claim 42B 30144795 also appeared in the Basin 42B Interlocutory Decree as a domestic claim for a well also in the NENESE of Section 2, T8S, R39E, Big Horn County.

4. Both claims are based on the same Declaration of Vested Groundwater Rights form.

5. The Tribe and the BIA objected to claims 42B 30144792 and 42B 30144795 stating the claims appeared to be duplicative and, if so, one claim should be dismissed.

6. Claimant is deceased. Gayle Russell, Claimant's daughter, is her personal representative.

7. Gayle, the Tribe, and the BIA filed a stipulation resolving the objections and issue remarks on claims 42B 30144792 and 42B 30144795. (Doc.¹ 5.00)

8. The stipulation proposes modifying the purpose of claim 42B 30144792 to "stock."

9. The stipulation proposes leaving all other elements of claim 42B 30144792 as they appeared in the Basin 42B Interlocutory Decree.

¹ ¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

42B 30144796

10. Claim 42B 30144796 appeared in the Basin 42B Interlocutory Decree as a stock claim for a spring box in the SWNENW of Section 9, T8S, R39E, Big Horn County.

11. The Tribe and the BIA objected to claim 42B 30144796 stating there does not appear to be a spring box in the claimed location.

12. In 2019, Gayle filled out the Statement of Claim on behalf of Claimant. Technical staff for the BIA and the Tribe confirmed with Gayle that she made a clerical error when recording the location of the spring on the Statement of Claim.

13. The parties agree the claimed spring is located in the SWNWSW of Section 4, T8S, R39E, Big Horn County. (Doc. 5.00, Doc. 7.00).

Notice-Type Issue Remark

14. All three claims received the following notice-type issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42B DECREE ISSUED 02/28/2008.

15. This remark served its notice purpose.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

7. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

8. Stock claims are not decreed with a quantified volume unless they are for United States claims to pothole lakes and reservoirs. Rule 24(c), W.R.C.E.R.

CONCLUSIONS OF LAW

42B 30144792 and 42B 30144795

1. The Tribe and the BIA's objections overcome the prima facie status of claim 42B 30144792. The purpose of the claim should be changed to "stock."

2. Because claim 42B 30144792 is a stock claim, the quantified volume should be replaced with the following standard volume information remark:

THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

3. These modifications resolve the objections to claims 42B 30144792 and 42B 30144795.

42B 30144796

4. The Tribe and the BIA's objections overcome the prima facie status of claim 42B 30144796. The parties showed by a preponderance of the evidence that the historically accurate location of the claimed spring is in the SWNWSW of Section 4, T8S, R39E, Big Horn County. Modifying the point of diversion and place of use as requested resolves the objections to claim 42B 30144796.

Notice-Type Issue Remark

5. The notice-type issue remark on the claims served its notice purpose.

RECOMMENDATIONS

1. The purpose of claim 42B 30144792 should be changed to "stock" and the quantified volume should be replaced with the information remark described above.

2. The point of diversion and place of use of claim 42B 30144796 should be corrected to the SWNWSW of Section 4, T8S, R39E, Big Horn County.

3. The notice-type issue remark should be removed from the claims.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: 42B 30144792 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: FLORENCE A YOUNG
HC 59 BOX 15
DECKER, MT 59025

Priority Date: DECEMBER 31, 1950

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 10.00 GPM

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	2	8S	39E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		NESE	2	8S	39E	BIG HORN
2		24		2	8S	39E	BIG HORN

Total: 1.00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: 42B 30144795 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: FLORENCE A YOUNG
HC 59 BOX 15
DECKER, MT 59025

Priority Date: DECEMBER 31, 1950

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 2.25 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	2	8S	39E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		NESE	2	8S	39E	BIG HORN

Total: 0.50

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK
BASIN 42B

Water Right Number: 42B 30144796 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: FLORENCE A YOUNG
HC 59 BOX 15
DECKER, MT 59025

Priority Date: DECEMBER 31, 1966

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 3.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF SPRING CREEK, NORTH FORK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	4	8S	39E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNWSW	4	8S	39E	BIG HORN